

STATE OF MICHIGAN
COURT OF APPEALS

CRISTINA MCCARTHY FOSTER,

Plaintiff-Appellee,

v

SCOTT JAMES FOSTER,

Defendant-Appellant.

UNPUBLISHED

June 3, 2014

No. 318693

Oakland Circuit Court

LC No. 2008-748211-DM

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

The parties married in 1993 and had three children. In 2008, plaintiff filed for divorce. Following arbitration, the trial court entered a judgment of divorce. On appeal, defendant challenged the underlying arbitration award, but this Court affirmed the judgment of divorce, holding there was no basis to vacate the arbitration award. *Foster v Foster*, unpublished opinion per curiam of the Court of Appeals, issued July 24, 2012 (Docket No. 302287). Pursuant to a stipulated order filed on March 31, 2009, the parties agreed to file a joint tax return for 2008 and to equally split “any refund.” However, after the refund check issued, defendant refused to sign the check, claiming that plaintiff committed fraud by failing to disclose a tax lien that drastically reduced the amount of the refund. When the issue of defendant’s signature came before the court, the judge noted that defendant could pursue the issue in another manner and urged defendant to sign the check, but he repeatedly refused and requested the disqualification of the trial court on multiple occasions.¹ Ultimately, the trial court ordered defendant to sign the 2008 IRS refund check in the amount of \$13,948.48, and noted the possibility of jail confinement for failing to comply. However, when defendant continued to refuse to sign the 2008 IRS check as well as other refund checks, the trial court held defendant in contempt and ruled that “child support payments shall abate” until plaintiff was credited the amount of \$13,811.24. Defendant filed an application for leave to appeal the trial court’s decision, and the application was granted, limited to “the issue of whether the trial court erred by abating plaintiff’s child support payments in order to force defendant to comply with the court’s orders requiring defendant to pay money

¹ The trial court denied the motions for disqualification, the chief circuit judge also denied the motions, and defendant did not obtain appellate relief on this issue.

to plaintiff.”² Because we conclude that the trial court legally erred in ordering the abatement of plaintiff’s child support payments to induce defendant’s compliance, we reverse and remand for proceedings consistent with this opinion.

This Court reviews a trial court’s decision to enter an order of contempt for an abuse of discretion. *Davis v Detroit Fin Review Team*, 296 Mich App 568, 623; 821 NW2d 896 (2012). The trial court’s factual findings are reviewed for clear error, and questions of law are reviewed de novo. *Porter v Porter*, 285 Mich App 450, 454-455; 776 NW2d 377 (2009). “The power to hold a party, attorney, or other person in contempt is the ultimate sanction the trial court has within its arsenal, allowing it to punish past transgressions, compel future adherence to the rules of engagement, i.e., the court rules and court orders, or compensate the complainant.” *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 708; 624 NW2d 443 (2000). “Civil contempt proceedings seek compliance through the imposition of sanctions of indefinite duration, terminable upon the contemnor’s compliance or inability to comply.” *DeGeorge v Warheit*, 276 Mich App 587, 592; 741 NW2d 384 (2007). Civil contempt³ may be imposed following notice and an opportunity to be heard. *Int’l Union, United Mine Workers of America v Bagwell*, 512 US 821, 827; 114 S Ct 2552; 129 L Ed 2d 642 (1994).

“Circuit courts have jurisdiction and power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments.” MCL 600.611; see also MCL 600.1715; *Davis*, 296 Mich App at 623. A trial court’s authority to sanction a party who refuses to comply with its orders is broad. See *Koy v Koy*, 274 Mich App 653, 659; 735 NW2d 665 (2007); *Draggoo v Draggoo*, 223 Mich App 415, 428-429; 566 NW2d 642 (1997). “A divorce case is equitable in nature, and a court of equity molds its relief according to the character of the case; once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy.” *Draggoo*, 223 Mich App at 428 (further citation omitted).

A parent has the duty to support his or her child. See MCL 722.3; *In re Beck*, 488 Mich 6, 12; 793 NW2d 562 (2010). “[T]he purpose of child support is to meet the needs of the child, and parents may not bargain away a child’s right to receive adequate support.” *Evink v Evink*, 214 Mich App 172, 176; 542 NW2d 328 (1995). Child support payments are not the property of the custodial parent, but rather, are solely for the benefit of the child. *Haefner v Bayman*, 165 Mich App 437, 444; 419 NW2d 29 (1988). “Support is measured by the needs of the child independent of the needs of the custodial parent.” *Id.* When the Legislature instructed the state friend of the court bureau to develop a child support formula, it stated that the formula “shall be based upon the needs of the child and the actual resources of each parent.” MCL 552.519(3)(a)(vi). Although we recognize that the trial court attempted to compel compliance with a sanction less severe than defendant’s incarceration, the punishment for contempt deprived

² *Foster v Foster*, unpublished order of the Court of Appeals, entered January 21, 2014 (Docket No. 318693). Although defendant briefed four issues in this application for leave to appeal, we granted leave only with regard to the issue of the order of abatement. Accordingly, our disposition is limited, and we do not address defendant’s other issues.

³ The parties do not dispute that this was a civil contempt proceeding.

the children of the support benefits which were lawfully necessary. Specifically, the court's decision in this case to abate plaintiff's child support payments did not focus on the needs of the parties' minor children. Rather, the court sought to induce defendant to comply with its orders and sign the refund checks. This is not a legally proper reason for departing from the MCSF. The trial court's broad authority to enforce its orders cannot invade the children's benefits. See *Koy*, 274 Mich App at 659.

"A trial court abuses its discretion when it relies on a legally improper reason for departing from the [Michigan Child Support Formula (MCSF)] in establishing a parent's child support obligation." *Ewald v Ewald*, 292 Mich App 706, 715; 810 NW2d 396 (2011). A court is bound by the MCSF when determining child support, and may only deviate from the formula "if the court determines from the facts of the case that application of the child support formula would be unjust or inappropriate." MCL 552.605(2); *Ewald*, 292 Mich App at 715-716. The MCSF provides a list of factors that may be relevant in determining if "[s]trict application of the formula may produce an unjust or inappropriate result." *Ewald*, 292 Mich App at 717-718, quoting 2008 MCSF 1.04(D) and 1.04 (E). The reasons for deviation "relate to the economic support of the child, either the child's needs or a parent's ability to provide support." *Id.* at 721. The Support and Parenting Time Enforcement Act (SPTE), MCL 552.601 *et seq.*, does not consider the suspension of child support as a redress for other transgressions, such as frustrated visitation time. *Ewald*, 292 Mich App at 718-719, n 2. Stated otherwise, the MCSF and the SPTE do not allow a trial court to modify a child support obligation to punish a parent who will not comply with the court's orders. Inducing a parent to comply with court orders does not relate to the minor children's needs or a parent's ability to provide support.

Finally, there is other legal support for the conclusion that inducing compliance with court orders is a "legally improper reason for departing from the MCSF." See *Ewald*, 292 Mich App at 715. In *Ewald*, this Court held that a trial court may not deviate from the MCSF in order to punish a parent who has violated or obstructed a parenting time order. *Id.* at 721-722. MCL 552.644 governs civil contempt for violating parenting time orders and provides that when a parent violates a parenting time order without good cause, the court must find the parent in contempt and may order certain remedies or punishments, MCL 552.644(2). These include ordering the parent to pay a fine, committing the parent to the county jail, ordering makeup parenting time, and modifying the parenting time order. *Id.* Although the issue here does not involve noncompliance with a parenting time order, MCL 552.644(2) nonetheless delineates appropriate remedies for when a parent is found in contempt. Notably, these remedies do not include the abatement of child support payments for contemptuous conduct by the offending parent.⁴ See MCL 552.644(2).

⁴ Plaintiff alleges that she did not request the punishment of incarceration because she did not want to burden the children with their father's incarceration. However, she notes that jailing defendant for his contempt would deprive him of his parenting time and, in turn, cause an abatement of child support. Civil contempt occurs when necessary to compel obedience with a court order, and one may not be incarcerated beyond the time necessary to comply with the court's order. *Spalter v Wayne Circuit Judge*, 35 Mich App 156, 161; 192 NW2d 347 (1971).

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood

Although the net effect of incarceration may be an abatement of child support, nonetheless, unlike the trial court's order of abatement for disobedience of a court order, defendant "carries the keys to his prison in his own pocket." *Borden v Borden*, 67 Mich App 45, 48; 239 NW2d 757 (1976). Contrary to plaintiff's position, this does not present a matter of form over substance, but rather, distinguishes between the court's protection and enforcement of the benefits of support for the children and defendant's self-imposed deprivation.